

Schneiderman v State of New York
2013 NY Slip Op 34077(U)
November 15, 2013
Supreme Court, Bronx County
Docket Number: 250795/13
Judge: Wilma Guzman
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.
This opinion is uncorrected and not selected for official publication.

FILED NOV 20 2013 BRONX COUNTY CLERK

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX
IAS PART 7

Index No. 250795/13
Motion # 28, A/O
Date: October 28, 2013

ERIC T. SCHNEIDERMAN
Attorney General of the State of New York,

Plaintiff-Claiming Authority,

-against-

STATE OF NEW YORK,

Co-Plaintiff

-against-

MUJAHID PERVEZ a/k/a PETER PERVEZ, RAHEEL
PERVEZ, MARIA KRAMER, SWAMI NARAYAN
PHARMACY INC. d/b/a SUPER VALUE PHARMACY,
BIG MART PHARMACY INC., DABUP INC. d/b/a
LANGDALE DRUG & SURGICAL SUPPLIES

Criminal Defendants

AYESHA FURQAN, SAFA, INC., NADIA PERVEZ,
MOHAMMAD BILAL, RAHILA PERVEZ, SARA
PERVEZ, 167 STREET PRESCRIPTION CENTER
INC., AKASI PHARMACY INC. d/b/a FAMILIAR
PHARMACY, ADUWA PHARMACY CORP., NEAB
PHARMACY, INC., THEONT'S PHARMACY INC.,
d/b/a FIRST HEALTH PHARMACY, JERICHO RMW
INC., COURTESY DRUGS & SURGICAL INC.,
LIBERTY PHARMACY, INC., INC., WELL CARE
PHARMACY OF LONG ISLAND, INC.,

Non-Criminal Defendants

Recitation, as required by Rule 2219(a) of the C.P.L.R., of the papers considered in the review of this motion to enter default judgment.

Papers
Plaintiff's Notice of Motion, Affirmation in Support, and
Exhibit Thereto.....

Numbered
1

Present:
Hon. Wilma Guzman
Justice Supreme Court,

FILED NOV 20 2013 BRONX COUNTY CLERK

Non-Criminal Defendants Nadia Pervez, article Bilal, Rahila Pervez, Sara Pervez Opposition and Cross-Motion, Affirmations in Support and Exhibits.....	2,3,4,5, 6
Non-Criminal Defendants Furquan and Raheel Pervez Cross-Motion, Affirmations in Support and Exhibits thereto	7

Upon the foregoing papers and after due deliberation, the Decision/Order on this motion is as follows:

Plaintiff moves this Court via Order to Show Cause for an Order seeking provisional remedies pursuant to C.P.L.R. Article 13A, §§ 1312, 1322 and 1335 and Article 63, §§ 6301, 6311, 6312 and 6313, for a preliminary injunction, enjoining non-criminal defendants Nadia Pervez, Mohammed Bilal, Rahila Pervez, Sara Pervez from removing from the State, or otherwise transferring, assigning, disposing of, encumbering or secreting property suffering any judgment to be taken against by confession or consent against any or all of the defendants named above and confirmation of the Order of Attachment. A temporary restraining Order was granted by this Court pending the State's motion for a preliminary injunction.

Non-criminal defendants Nadia Pervez, Rahila Pervez, Sara Pervez and Mohammad Bilal oppose the State's request for provisional remedies and Cross-move for an Order pursuant to C.P.L.R. 1312(4) for an Order granting reasonable living expenses and counsel fees.

Criminal Defendant Raheel Pervez and Non-Criminal Defendant Ayesha Furquan move this Court pursuant to C.P.L.R. 1312(4) for an Order granting reasonable living expenses and counsel fees. Defendants Raheel Pervez and Non-Criminal Defendant Ayesha Furquan do not oppose The Temporary Restraining Order and Order of Attachment.

C.P.L.R. 1312(3) states:

A court may grant an application for a provisional remedy when it determines that: (a) there is a substantial probability that the claiming authority will prevail on the issue of forfeiture and that failure to enter the order may result in the property being destroyed, removed from the jurisdiction of the court, or otherwise be unavailable for forfeiture; (b) the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order may operate; and (c) in an action relating to real property, that entry of the requested order will not substantially diminish, impair, or terminate the

FILED NOV 20 2013 BRONX COUNTY CLERK

lawful property interest in such real property of any person or persons other than the defendant or defendants.

C.P.L.R. 1333 states in pertinent part that:

A preliminary injunction may be granted in any action under this article, whether for money damages or otherwise, where it appears that the defendant threatens or is about to do, or is doing or procuring or suffering to be done, an act in violation of the claiming authority's rights respecting the subject of the action, and thereby tending to render a resulting judgment ineffectual.

Plaintiff alleges that criminal defendants, including Mujahid Pervez a/ka/ Peter Pervez, Raheel Pervez, (son of Mujahid), Maria Kramer, Big Smart, Super Value, and Langdale engaged in a criminal scheme in violation of Medicaid Regulations. Plaintiff further alleges that the criminal defendants acted in concert to conceal the scheme and remove millions of dollars to the family members of Peter Pervez and other entities that he controlled. Non-criminal defendants, including family members of Mujahid Pervez a/ka Peter Pervez are alleged to have been involved in this scheme to defraud and conceal. These members are his wife, Rahila Pervez, his daughters Nadia and Sara Pervez, his son in law Mohammad Bilal (wife: Nadia Pervez) and his daughter in law, Ayesha Furquan, who is the wife of criminal defendant Raheel Pervez.

"A provisional remedy in an action against a "criminal defendant" is not limited to assets that can be traced to the alleged crimes but can reach any assets of the defendants that could be used to satisfy a potential judgment in the forfeiture action." Morgenthau v. Citisource, Inc., et al, 68 N.Y.2d 211. (1986). "A provisional remedy in an action against a "non-criminal defendant" is limited to assets that are shown to be proceeds or the substituted proceeds of the crime or the instrumentality of a crime. Morgenthau v. Citisource, Inc, 68 N.Y.2d 211, 212. The Attorney General has the substantial public interest of safeguarding funds and other assets to ensure the availability to satisfy any forfeiture claim if a conviction is obtained which must be weighed against the hardship on any party against whom the order may operate. Morgenthou v. Citysource, Inc., supra.

In support of the Order to Show Cause as well as in opposition to the cross-motions, the Attorney General submits, inter alia, the affidavits of Senior Special Auditor-Investigator Olga

FILED NOV 20 2013 BRONX COUNTY CLERK

Sunitsky and Senior Special Investigator James Serra. These affidavits are sufficient to support the substantial probability that the claiming authority will likely prevail on the issue of forfeiture as to the criminal defendants.

The Sunitsky Affidavit supports, by a preponderance of the evidence, the Attorney General's argument that the assets in question are the proceeds or substituted proceeds of a crime and that these assets are in danger of being dissipated or otherwise made unavailable for forfeiture. The Sunitsky and Serra affidavits further establish by a preponderance of the evidence that non-criminal defendants Rahilia Pervez, Nadia Pervez and Mohammad Bilal and Ayesha Furquan knew or should have known that the property was the proceeds of the criminal enterprise as alleged against Indicted criminal defendants Peter Pervez and Raheel Pervez. The affidavits of the non-criminal defendants herein and the criminal defendant do not sufficiently rebut the Attorney General's position that the need to preserve the property outweighs the hardships. As such, this Court grants the preliminary injunction and confirms the Order of Attachment as follows:

Unlike the assets at issue in the Cit-source case, *supra*, at issue here are the monetary and property interests of the non-criminal defendants which were attached by the claiming authority and determining whether they are separate and apart from that of the criminal defendant Mujahid Pervez a/k/a Peter Pervez and in the case of Ayesha Furquan, also, criminal defendant Raheel Pervez. The assets that are traceable to Indicted defendant Mujahid Pervez a/k/a Peter Pervez, are clearly in danger of dissipating or becoming otherwise unavailable to satisfy any forfeiture claim as is undisputed that this defendant has fled the country and is a fugitive from prosecution, thus outweighing any hardship. The issue then becomes which property can be imputed to Mujahid Pervez a/k/a Peter Pervez and Raheel Pervez and which property are the separate assets of non-criminal defendants.

At the outset, the Court determines the issue of the Real Property located at 208 Bagatelle Road. Plaintiff argues that this property is subject to restraint alleging Peter Pervez placed this home in the name of his daughter, non-criminal defendant Nadia Pervez in the attempt to hide assets that might otherwise be subject to restraint. It is important to note that, as indicated by Nadia Pervez's affidavit, she purchased the property on or about December 10, 1997. Defendant's counsel argues

FILED NOV 20 2013 BRONX COUNTY CLERK

that the statute of limitations on this transaction would have expired pursuant to C.P.L.R. § 1311(1) which limits any actions commenced under this section to five years of the commission of the crime. The purchase of the property located at 208 Bagatelle Road occurred in 1997. As such, it is outside the purview of the assets subject to forfeiture. As such, this Court denies the Order of Attachment only as it pertains to the property located at 208 Bagatelle Road and grants this portion of Nadia Pervez's cross-motion. All other portions of the Rahilia Pervez, Nadia Pervez, Sara Pervez and Mohammed Bilal Cross-motion are denied unless otherwise addressed below.

Defendants Raheel Pervez and Ayesha Furquan do not oppose the motion for a preliminary injunction and the Order of Attachment. The affidavits submitted in support of the motion pursuant to C.P.L.R. 1312(4) is confirmed as to defendants Raheel Pervez and Ayesha Furquan as well as defendants Liberty Pharmacy, Safa Inc., Akasi Pharmacy, Inc. d/b/a Familiar Pharmacy and Neab Pharmacy Corp. As such the Preliminary Injunction is issued and Order of Attachment confirmed as to Ayesha Furquan and Raheel Pervez. The motion of Ayesha Furquan and Raheel Pervez are denied as detailed below.

C.P.L.R. 1312(4) states:

Upon motion of any party against whom a provisional remedy granted pursuant to this article is in effect, the court may issue an order modifying or vacating such provisional remedy if necessary to permit the moving party to obtain funds for the payment of reasonable living expenses, other costs or expenses related to the maintenance, operation, or preservation of property which is the subject of any such provisional remedy or reasonable and bona fide attorneys' fees and expenses for the representation of the defendant in the forfeiture proceeding or in a related criminal matter relating thereto, payment for which is not otherwise available from assets of the defendant which are not subject to such provisional remedy. **Any such motion shall be supported by an affidavit establishing the unavailability of other assets of the moving party which are not the subject of such provisional remedy for payment of such expenses or fees. (Emphasis Added).**

See also, Morgenthau v. DiNapoli, 84 A.D.3d 692 (1st Dept. 2011); Morgenthau v. Western Express International, Inc., (1st Dept. 2011).

FILED NOV 20 2013 BRONX COUNTY CLERK

That portion of the Cross-motion which seeks the release of restrained funds for reasonable living expenses as it pertains to defendant Rahilia Pervez and Sara Pervez is denied. The Rahilia Pervez affidavit indicates that she has been employed by GEO Medical Care, P.C. since 2008, earning a salary of approximately \$90,000 to \$100,000 for 2012. These funds which are the earned income of defendant Rahilia Pervez should not be part of the assets which were attached pursuant to this Court's Order. As such, non-criminal defendant Rahilia Pervez has failed to sufficiently establish the unavailability of funds not subject to the provisional remedy from which she can make payment on her living expenses and attorney's fees and the expenses of her daughter, Sara Pervez. Notwithstanding, this Court authorizes the release of the \$25,000 pursuant to C.P.L.R. 1312(4) for the payment of attorney fees made payable to Jaspens Schlessinger, LLP for the reasonable attorney services of Linda S. Agnew which were detailed in her supporting affidavit. This portion of the Court's Order is granted without prejudice, and Rahilia Pervez and Sara Pervez are authorized to renew this application for future reasonable legal fees upon the presentation of further affidavits of Service from legal counsel.

Nadia Perez & Mohammad Bilal attest to ownership of bank accounts totaling \$7500 including joint accounts and joint accounts with infants names, currently restrained. As indicated in her financial affidavit, Nadia Pervez is an attorney with her own law firm "fully capable of generating legitimate income." Mohammed Bilal, indicates in his affidavit that he is a duly licensed physician employed by John T. Mather Memorial Hospital in Port Jefferson. These funds which are the earned income of defendants Nadia Pervez and Mohammed Bilal should not be the part of the assets which were attached pursuant to this Court's Order. Notwithstanding, this Court authorizes the release of the \$7500.00 pursuant to C.P.L.R. 1312(4) for the payment of attorney fees made payable to Jaspens Schlessinger, LLP for the reasonable attorney services of Linda S. Agnew which were detailed in her supporting affidavit.

Defendant Ayesha Furquan's motion for reasonable living expenses is granted to the extent that she is entitled to collect \$1200 per week in salary from Liberty Pharmacy and authorized to receive \$25,000 in restrained funds for bonafide attorney's fees made payable to the Law Office of John Carman to be placed in a client account for the representation of Ayesha Furquan. This portion of the Court's Order is granted without prejudice, and defendant Ayesha Furquan is authorized to

FILED NOV 20 2013 BRONX COUNTY CLERK

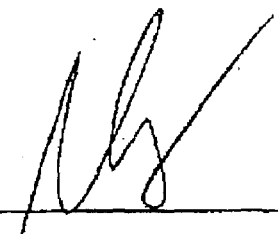
renew her application for future legal fees upon the presentation of affidavits of Service from legal counsel.

Defendant Raheel Pervez's motion for reasonable attorney fees is granted to the extent that this Court authorizes the release of \$100,000.00 in restrained funds for attorney's fees made payable to the Law Office of John Carman to be placed in a client account for the representation of Raheel Pervez. This portion of the Court's Order is granted without prejudice, and defendant Raheel Pervez is authorized to renew his application for future legal fees upon the presentation of affidavits of Service from legal counsel.

This Court denies the application of defendants Nadia Pervez, Rahilia Pervez, Sara Pervez and Mohamad Bilal, submitted via letter dated October 8, 2013, which seeks to have this Court all documents concerning this action be filed under seal. These defendants argue that good cause exists to maintain their reputation and private interests which outweighs the public interest in judicial access. 22 NYCRR 216.1. The plaintiff opposes this application arguing that the public interest in safeguarding the assets which may have otherwise been dissipated have been satisfied and as such a seal is no longer necessary. This Court denies the October 8, 2013 application of defendants Nadia Pervez, Rahilia Pervez, Sara Pervez and Mohamad Bilal finding that there is no legal basis for such a sealing Order on the grounds argued. See, Mosallam v. Berenson, 76 A.D.3d 345 (1st Dept. 2010).

Settle Order

11/15/13
DATE



HON. WILMA GUZMAN
Justice Supreme Court